

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ERIC THOMAS HURD,)	
)	
Plaintiff,)	
vs.)	NO. CIV-16-0291-HE
)	
LOAN MAX, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Eric Thomas Hurd, proceeding *pro se*, has filed this case seeking judgment against defendants Loan Max, Anderson Financial LLC, and Oklahoma Repossessors, alleging they collaborated to effect an unlawful repossession of plaintiff's truck and its contents.¹ Consistent with 28 U.S.C. § 636(b)(1)(B), this matter was referred to Magistrate Judge Gary M. Purcell for initial proceedings. Construing plaintiff's claims as arising under 42 U.S.C. § 1983, Judge Purcell recommended dismissal of the claims on the basis the complaint failed to allege state action.

Plaintiff has filed an objection to the report and recommendation, asserting that his claims do not arise under § 1983. Instead, plaintiff seeks to pursue this action as a breach of contract action with federal subject matter jurisdiction based on diversity of citizenship, 28 U.S.C. § 1332. However, plaintiff's pleadings appear to allege that Oklahoma Repossessors is a citizen of Oklahoma, Doc. #7, and his pleadings in another case filed this year allege that he is a citizen of Oklahoma, Hurd v. Hurd, Case No. CIV-16-0355-HE, Doc. #6 (W.D. Okla,

¹Plaintiff has sought to amend his complaint under Federal Rule of Civil Procedure 15 to add Oklahoma Repossessors as a defendant. Doc. #7.

May 11, 2016). Accordingly, there is no diversity of citizenship and no other apparent basis for subject matter jurisdiction. See Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373–74 (1978) (“[D]iversity jurisdiction is not to be available when any plaintiff is a citizen of the same State as any defendant.”) The court therefore **ADOPTS** the Report and Recommendation [Doc. #9] and this case is **DISMISSED** without prejudice to its re-filing in a proper state court.

IT IS SO ORDERED.

Dated this 7th day of September, 2016.


JOE HEATON
CHIEF U.S. DISTRICT JUDGE